the car to the next registered owner. The plaintiffs contended that by reason of section 6 of the Road Traffic Ordinance, 1958, the registration card is not a document and does not *prima facie* establish that the person registered as the owner must necessarily be the legal owner. Miss Chen cited the case of *Central Newbury* v. *Unity Finance Ltd.*[4] where

"on November 4, 1955, the plaintiffs' motor saleroom was visited by a personable stranger giving the name of C., who expressed a wish to buy a second-hand Morris car. It was agreed that the plaintiffs should sell the car to a finance company who would let it on hire-purchase to 'C'. 'C'. signed the proposal forms for submission to the finance company, and, contrary to the agreement between the plaintiffs and the finance company, was allowed to take away the car and its registration book, leaving behind in part exchange a Hillman car, which was later found to be on hire-purchase. The Morris car, which the plaintiffs had purchased at an auction, was then registered in the name of one A., who had not signed the book. The book contained a warning that 'The person in whose name a vehicle is registered may or may not be the legal owner of the vehicle'.

On November 7 a personable stranger, giving the name of A., took the car to the third parties' garage and offered it for sale, the purported signature of A being then in the book. The third parties bought the car, and later sold it to the first defendants, a hire-purchase company, who let it to the second defendant. In an action for damages for conversion, the defendants pleaded that the plaintiffs were estopped from denying the authority of C. to sell the car, as they had permitted him to take possesssion of the car and registration book without having made any or any sufficient inquiries:—

Held: (by Hodson and Morris L.J.J., Denning L.J. dissenting), that by entrusting the car to C. together with a document which clearly stated that it did not prove legal ownership, the plaintiffs were not making any representation that C. was entitled to deal with the car as his own, so as to estop them from asserting their own title."

The point raised by Miss Chen, I think, is well taken although Mr. Narayanan did not seem to have vigorously pursued the point in his submission. Be that as it may, there is, however, disclosed from the defence that at the time Tan Ah Lek purchased the said car, the registration card did not bear a valid existing ownership claim of the plaintiffs. The question that Mr. Narayanan posed for the court's determination was whether the title in fact passed. In so doing, he argued that there was a document which purportedly came from the plaintiffs withdrawing the ownership claim. He pointed out that the Registrar and Inspector of Motor Vehicles accepted the document as being sent from the plaintiffs and used it to cancel the ownership claim. He also pointed out that the pleadings did not at any time state there was fraud in the whole transaction. On the evidence it is quite apparent that the Registrar had assumed that the withdrawal letter came from the plaintiffs, but it is equally if not more apparent not only from the testimony of the plaintiffs' witnesses but also from the circumstances surrounding the whole transaction, indeed it seemed highly improbable that it was the plaintiffs who sent the withdrawal letter cancelling the ownership claim even though the evidence should reveal that there was failure on the part of the plaintiffs to bring the matter to the attention of the police and that they had delayed in taking steps to re-possess the car.

At this juncture, it might be appropriate for me to direct my mind to the evidence of Tan Ah Lek. I accept his testimony to the effect that the first and second defendants were *bona fide* purchasers for value without notice but that alone will not, having regard to all the circumstances of the case, be sufficient to invest them with good title as the hirer had none and could not therefore, in law, pass a good title to the purchasers.

It is my considered judgment that the plaintiffs' claim must succeed and I do hereby make an order for the plaintiffs declaring that the said car is the property of the plaintiffs. I also order that costs be paid by the defendants.

It is also my judgment that the counterclaim founded upon grounds of trespass, conversion and wrongful detention must necessarily fail. As for the second defendant's allegation that the plaintiffs wrongfully and/or forcibly seized the said car in circumstances that caused substantial embarrassment and loss of face to him, there is no necessity for me to consider this point as the parties agreed that, dependent upon the finding on the main issue, no evidence would be given by the second defendant to prove his allegation of wrongful and/or forcible seizure and the circumstances under which substantial embarrassment and loss of face had been caused.

For these reasons, I would dismiss the counterclaim with costs.

Plaintiffs' claim allowed.
Counterclaim dismissed.

Solicitors: *Skrine & Co.; Ng Ek Teong & Partners.*

PUBLIC PROSECUTOR v. SYED ABDUL BAHARI SHAHABUDDIN

[R.CrJ. (Abdoolcader J.) June 12, 1975]
[Ipoh — Criminal Revision No. 12 of 1975]

Criminal Law and Procedure — Discharge not amounting to acquittal — No bar to subsequent prosecution — Criminal Procedure Code (F.M.S. Cap. 6) s. 254.

In this case the accused had earlier been charged with an offence under the Prevention of Corruption Act, 1961, but had been discharged not amounting to acquittal. The accused was subsequently charged with the same offence and produced before the Sessions Court, Ipoh, whereupon the President struck off the case.

Held: (1) unless there are good grounds to the contrary a discharge under section 254 of the Criminal Procedure Code should amount to an acquittal. Good grounds would arise where the prosecution is unable to proceed for the time being but can satisfy the court that the temporary impediment is not insurmountable and that it will proceed within a reasonable time;

(2) an order of discharge not amounting to an acquittal is no bar to a second prosecution and therefore the order of striking off the case was unjustified and erroneous in law.

Cases referred to:-

(1) *V. Longworth* v. *Public Prosecutor* Johore Criminal Appeal No. 33 of 1964 (unreported).

(2) *Chu Chee Peng* v. *Public Prosecutor* [1973] 2 M.L.J. 35.

CRIMINAL REVISION.

Shaik Daud bin Haji Mohamed Ismail (Deputy Public Prosecutor) for the applicant.

H. R. Sankey for the respondent.

Abdoolcader J. (delivering oral judgment): My attention was drawn by a report in the *New Straits Times* of June 6, 1975, to the proceedings in the Sessions Court at Ipoh on the preceding day when the learned president struck off the case against Probationary Inspector Syed Abdul Bahari Shahabuddin bin Syed Abdullah who was charged with an offence under section 4(a) of the Prevention of Corruption Act, 1961. I accordingly called for the record of the proceedings in Ipoh Sessions Court Arrest Case No. 158/75 to examine and consider the correctness, legality and propriety of the order made by the learned president.

The learned president apparently proceeded on the basis that he had no jurisdiction as the accused had been granted a discharge not amounting to an acquittal on the same charge by a former learned president of the Sessions Court at Ipoh, and accordingly struck off the case in exercise of what he termed his inherent powers.

The accused had been charged on the same charge previously in the Sessions Court at Ipoh in Ipoh Sessions Court Arrest Case No. 35/73 and after six witnesses had given evidence the prosecution informed the court on March 22, 1975, that it had five more witnesses and that one of them, a material witness, was seriously ill and unable to be present in court that day. A medical certificate to that effect was tendered in support, and the prosecuting officer then requested the case to be adjourned to another date for continued hearing. Counsel for the defence objected to this course, contending that the offence alleged took place in July, 1972, that the accused was charged in court only in April, 1973, and that there had been several postponements of the case, and requested the court to grant the accused a discharge not amounting to an acquittal "and matters could be left at that so that the prosecution could make its own option as to what to do." The learned president in that case accordingly granted the accused a discharge not amounting to an acquittal, recording and attributing the reasons therefor to the circumstances pertaining to the history of the case in question and also his personal position in hearing it at a later date, presumably referring to his impending resignation from the Judicial Service.

I do not think that the learned president in that case was correct in the order he made as the only provision in the Criminal Procedure Code which could apply in the circumstances would have been section 254(ii) which would empower him to grant a discharge only if the officer conducting the prosecution informed the court that he did not propose further to prosecute the accused on the charge, whereupon all proceedings thereon would be stayed by leave of the court and the accused discharged of and from the same. The learned president acted *suo motu* in making the order of discharge with the prosecuting officer, far from acting under the provisions of section 254, only applying for an adjournment. However, further consideration of this aspect would only be academic in view of the fact that a fresh charge in respect of the same offence has been preferred against the accused in the present proceedings before the Sessions Court at Ipoh which have now come under review in this criminal revision.

I would only pause to observe that when there is no reasonable prospect of a case proceeding as a result of the absence of one or more witnesses or for some other cogent reason, then the prosecution should act under the provisions of section 254 of the Criminal Procedure Code. Sub-section (iii) of section 254 specifically enacts that a discharge under that section shall not amount to an acquittal unless the court so directs. It is settled law that unless there are good grounds to the contrary, a discharge under this provision should amount to an acquittal. Good grounds for a discharge not amounting to an acquittal would arise where the prosecution is unable to proceed for the time being but can satisfy the court that the temporary impediment is not unsurmountable and that it will proceed within a reasonable time. This seems to be the *raison d'etre* for the scheme providing for a discharge not amounting to an acquittal.

Be that as it may, when the second prosecution was instituted and a fresh charge was preferred against the accused on June 5, 1975, the learned president was wholly competent to hear the case. There were no grounds whatsoever for his conclusion that he had no jurisdiction, a view which he presumably arrived at on the basis that what transpired in the previous proceedings would unless set aside give rise to a plea of *autrefois acquit*. This would certainly not be so as the order made in the previous proceedings by the former learned president was clearly one of discharge not amounting to an acquittal, and section 302(v) of the Criminal Procedure Code specifically provides that the discharge of an accused person is not an acquittal for the purposes of a plea of a previous acquittal under that section. The learned president in this case acted as he did *ex mero motu* as counsel for the accused who appeared before him quite properly made no such suggestion but only asked for an early date of hearing.

The learned president in acting as he did may perhaps have felt bound by the decision of Azmi J. (as he then was) in the unreported case of *V. Longworth* v. *Public Prosecutor*.[1] In that case, on a charge for a motoring offence a preliminary point was taken on behalf of the defendant that the notice of intended prosecution was invalid and the learned magistrate accepted this submission and directed that the accused be discharged, such discharge not amounting to an acquittal — an order presumably made under section 173(g) of the Criminal Procedure Code as the only applicable provision. Azmi J. (as he then was) in an appeal dealing with the validity of a second prosecution instituted on a fresh summons issued on the same charge and based on the same facts held that there should in fact have been an acquittal and not just a mere discharge in the first prosecution and that the order of discharge would have to be set aside before a second prosecution could proceed.

The decision in *Longworth* can possibly, on the facts of that case and the finding by the learned judge that the order of discharge should in fact have been one of acquittal, be distinguished from the matter before me, but if it purported to decide that an order of discharge not amounting to an acquittal must in all cases be set aside in the first instance before a second prosecution can proceed, then, with respect, I must wholly disagree. An order of discharge not amount-

ing to an acquittal is no bar to a second prosecution, as I pointed out earlier, by virtue of the provisions of section 302(v) of the Criminal Procedure Code. And the Federal Court had occasion to restate this patent proposition in a reference pertaining to a discharge granted under the provisions of section 173(g) of the Code in *Chu Chee Peng* v. *Public Prosecutor*[2] when it specifically decided that no appeal is necessary to have an order of discharge made under section 173(g) set aside since it is not an acquittal and that it is only an acquittal which requires to be set aside by the High Court before any retrial on the same charge can proceed.

In the event, I find that the action taken by the learned president in striking off the case against the accused was wholly unjustified and erroneous in law, and I accordingly set aside the order he made and reinstate and remit the case to him with a direction, in deference to the request made by counsel for the accused, to fix an early date for the hearing of the case.

Order accordingly.

Solicitors: *H. R. Sankey & Co.*

PENANG DEVELOPMENT CORPORATION v. COLLECTOR OF LAND REVENUE PENANG & ANOR.

[O.C.J. (Arulanandom J.) June 12, 1975]
[Penang — Originating Motion No. 3 of 1975]

Land Acquisition — Application — Enlargement of time — Discretion — Land Acquisition Act, 1960, s. 38.

This was an application for enlargement of time for an application by the applicant under Land Acquisition Act 1960. The Collector had carried out acquisition proceedings in respect of a piece of land and made an order. Forms G & H were served on the applicants on December 4, 1974. The Act stipulates that an application by an applicant must be made within 6 weeks of the date of the receipt of notice under section 16 of the Act. The application was made on February 10, 1975. One of the grounds advanced by the applicant was that there had been some confusion as to who should apply as the land in question had not yet been alienated by the State to the applicant.

Held: there was a *bona fide* controversy as to who was to appeal, the amount of compensation awarded was a very substantial sum and the applicant was not wholly to be blamed for the delay. For reasons stated the court in the exercise of its discretion allowed the application.

[Editorial Note: An appeal against this decision was lodged (F.C. Civil Appeal No. 41 of 1975) but it was subsequently withdrawn, and no records were filed.]

Cases referred to:-

(1) *Re Coles* [1907] 1 K.B. 1.
(2) *In Re Helsby* [1894] 1 Q.B. 742 at 746.
(3) *Re Norman* (1886) 16 Q.B.D. 673, C.A.
(4) *Re Boycott* (1885) 29 Ch.D. 571, C.A.
(5) *Lau Cher Hian* v. *Collector of Land Revenue, Muar* [1971] 1 M.L.J. 96.

ORIGINATING MOTION.

Lim Kean Chye for the applicant.

Ghazi bin Ishak (Deputy Public Prosecutor) for the first respondent.

Lim Kean Siew (*P. R. Manecksha* with him) for the second respondent.

Arulanandom J.: This was an application by the Penang Development Corporation for an order that the period of an application by the applicant under section 38 of the Land Acquisition Act 1960 may be enlarged by the court and for consequential directions. The respondents were the Collector of Land Revenue Penang and Sungai Nibong Company Ltd.

The facts very briefly are as set out in the affidavit of the General Manager of the applicant dated February 15, 1975. According to the affidavit the contents of which are not disputed in early 1974 the applicant which is a body corporate incorporated by statute *viz.* the Penang Development Corporation Act 1971 applied to the State Authority to acquire land known as Lot No. 2164 Mukim 13 Daerah Timor Laut Pulau Pinang an approximate area of 346,433 acres (hereinafter referred to as the said land) for public, industrial, residential, commercial and agricultural purposes to wit for land development and utilization, resettlement of squatters, housing, institutional and recreational amenities in relation to integrated urban development and matters connected therewith. The Collector carried out acquisition proceedings in respect of the said land and made an award totalling $8,533,415 in respect of the said land. Forms G and H under the Land Acquisition Act 1960 were served on the applicant on December 4, 1974. The application for enlargement of time under section 38 of the Land Acquisition Act was made on February 10 while the Act stipulates it should be within six weeks of the date of receipt of notice under section 16 of the Act.

Section 38 of the Act stipulates that this time limit shall not be capable of enlargement by any court except in such special circumstances as the court may think fit. Hence there is a discretion given to the court although in a qualified manner and as long as circumstances exist which in the opinion of the court are special, the court can exercise its discretion.

First and foremost considering the length of delay it is evident there was no laches or indifference to the law — the delay was less than a month.

The reasons advanced by the applicant for the delay are as follows as stated in the affidavit May 12, 1975 of the General Manager of the applicant in paragraphs 5, 6, 7, 8 & 9: —

"5. Forms G & H were served on the applicant on December 4, 1974. There was a delay in objecting to the award as the Applicant had thought that the State Authority should make the objection because the land had yet to be alienated to the Applicant. The land still remains state land until the documents of title in respect thereof are issued to the Applicant.

6. Up to the present time the Applicant has not acquired any land on its own. It has only acted as the developing agency for the State Government on lands acquired by the State for particular public purposes. The lands will not be transferred in toto to the Applicant but alienated in phases as and when applied for. It was because of this that we submitted that the State should be the party to object as there is no assurance we will obtain all the land.

7. The State Authority on or about 30 January verbally asked the Applicant to make the necessary objections.

8. It would appear also that the Collector in taking a valuation from the Regional Valuer and in considering his report was acting against the principles of natural justice in not informing either the State Authority or the Applicant of the